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7 Attorneys for Debtor

9
10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF OREGON

12 In re

13 B. & J. Property Investments, Inc.,
14 Debtor.

Case No. 19-60138-pcm11

**DEBTOR'S APPLICATION FOR
ORDER TO EMPLOY TONKON
TORP LLP AS ATTORNEYS FOR
DEBTOR**

15
16 B. & J. Property Investments, Inc., debtor and debtor-in-possession
17 ("Debtor"), moves this Court for entry of an order approving the employment of Tonkon
18 Torp LLP ("Tonkon Torp") as Chapter 11 counsel for Debtor. Debtor makes this
19 Application pursuant to 11 U.S.C. § 327 and Federal Rule of Bankruptcy Procedure 2014. In
20 support of this Motion, Debtor states as follows:

- 21 1. On January 17, 2019 (the "Petition Date"), Debtor filed a voluntary
22 petition for relief under Chapter 11 of Title 11 of the United States Code.
23 2. Debtor has continued in possession of its property and is continuing to
24 operate and manage its business as debtor-in-possession pursuant to Sections 1107(a) and
25 1108 of Title 11 of the United States Code.
26

1 3. No request has been made for the appointment of a trustee or
2 examiner, and no official committee of unsecured creditors has been appointed in Debtor's
3 case at this time.

4 4. The Court has jurisdiction over this matter pursuant to 28 U.S.C.
5 §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
6 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

7 5. Debtor is the owner of property located at 4490 Silverton Road N.E.,
8 Salem, Oregon. The property is developed as a RV park and self-storage facility currently
9 leased to Better Business Management, Inc. ("BBM"). BBM and Debtor are subject to a
10 judgment in the sum of approximately \$4.8 million from a class action lawsuit entitled
11 *Loren Hathaway, et al. v. B & J Property Investments, Inc., et al.*, Case No. 13C14321 in
12 the Circuit Court of the State of Oregon for the County of Marion ("Marion County Case").
13 The Marion County Case is on appeal. However, BBM does not have sufficient resources
14 to pay the judgment and continue operations. As part of this reorganization, Debtor intends
15 to reject the lease with BBM and engage in the RV Park and self-storage business. Once the
16 new business operations are established and stabilized, Debtor will develop a plan of
17 reorganization that will seek to maximize the return to creditors and equity holders.

18 6. Debtor desires to retain and employ Tonkon Torp as counsel in this
19 Chapter 11 case, pursuant to Section 327 of the Code, to represent Debtor in all aspects of its
20 reorganization, on the terms and subject to the conditions described below.

21 7. Debtor believes Tonkon Torp is well suited for this representation.
22 Tonkon Torp has experience in all aspects of the law that may arise in this Chapter 11 case.
23 In particular, Tonkon Torp has substantial bankruptcy and restructuring, corporate, finance,
24 litigation, real estate, land use, regulatory, labor, and tax expertise.

1 8. Debtor is informed that Timothy J. Conway and Ava L. Schoen, the
2 attorneys at Tonkon Torp primarily involved in this Chapter 11 case, are admitted to practice
3 before this Court and that they have read Local Bankruptcy Rule 2016.

4 9. The services to be performed by Tonkon Torp are necessary in order
5 for Debtor to perform its duties as debtor-in-possession. Subject to the control of and further
6 order of the Court, Tonkon Torp intends to render the following services to Debtor:

7 a. Advise Debtor of its rights, powers and duties as a debtor and
8 debtor-in-possession continuing to operate and manage its business and property under
9 Chapter 11 of the Code;

10 b. Take all actions necessary to protect and preserve Debtor's
11 bankruptcy estate, including the prosecution of actions on Debtor's behalf, the defense of any
12 action commenced against Debtor, negotiations concerning all litigation in which Debtor is
13 involved, objections to claims filed against Debtor in this bankruptcy case, and the
14 compromise or settlement of claims;

15 c. Advise Debtor concerning, and prepare on behalf of Debtor, all
16 necessary applications, motions, memoranda, responses, complaints, answers, orders, notices,
17 reports, and other papers, and review all financial and other reports required of Debtor as
18 debtor-in-possession in connection with administration of this Chapter 11 case;

19 d. Advise Debtor with respect to, and assist in the negotiation and
20 documentation of, financing agreements, debt and cash collateral orders, and related
21 transactions;

22 e. Review the nature and validity of any liens asserted against
23 Debtor's property and advise Debtor concerning the enforceability of such liens;

24 f. If appropriate, prepare, conduct and assist with the sale of
25 Debtor through 11 U.S.C. § 363;

26 ///

g. Advise Debtor regarding (i) its ability to initiate actions to collect and recover property for the benefit of its estate; (ii) any potential property dispositions; and (iii) executory contract and unexpired lease assumptions, assignments and rejections, and lease restructuring and recharacterizations;

h. If appropriate, negotiate with creditors concerning a Chapter 11 plan; prepare the plan, disclosure statement and related documents; and take the steps necessary to confirm and implement the plan, including, if necessary, negotiations for financing the plan;

i. Advise and assist Debtor regarding bankruptcy claim(s) and related actions including those arising from the pending matter *Loren Hathaway, et al. v. B & J Property Investments, Inc., et al.*, Marion County Circuit Court Case No. 13C1421, including subsequent appeals thereof; and

j. Provide such other legal advice or services as may be required in connection with this Chapter 11 case.

10. Subject to Court approval, Debtor has agreed to compensate Tonkon Torp on an hourly basis in accordance with Tonkon Torp's ordinary and customary hourly rates in effect on the date services are rendered. The Tonkon Torp professionals who will be primarily responsible for providing these services, their status and their billing rates are as follows:

<u>Name</u>	<u>Status</u>	<u>Hourly Rate</u>
Timothy J. Conway	Partner	\$550.00
Ava L. Schoen	Of Counsel	\$395.00
Spencer Fisher	Paralegal	\$195.00

11. From time to time, other Tonkon Torp attorneys and paralegals may also render services to Debtor in order to take advantage of specialized skills or expertise, to meet the demands of the case schedule, or for other appropriate reasons. Debtor has agreed

1 that Tonkon Torp will also be compensated for the services of these professionals at their
2 usual and customary hourly rates.

3 12. Tonkon Torp has not agreed to any variations from, or alterations to,
4 its standard or customary billing arrangements for this engagement.

5 13. None of the Tonkon Torp professionals included in this engagement
6 have varied their rate based on the geographic location of this bankruptcy case.

7 14. Tonkon Torp is billing Debtor at the same effective rates that it billed
8 prepetition.

9 15. Tonkon Torp will maintain detailed, contemporaneous time records of
10 expenses incurred with the rendering of legal services described above by category and
11 nature of services rendered.

12 16. As disclosed in the Rule 2014 Verified Statement for Professional filed
13 herewith, prior to the filing of the bankruptcy petition, Tonkon Torp received funds from
14 Debtor and applied these funds for pre-petition services and costs rendered prior to the filing
15 of the bankruptcy. The remaining balance, if any, is held as a retainer.

16 17. Within the 12-month period preceding the Petition, Tonkon Torp
17 provided legal services to Debtor. The total cost of legal services prior to the filing of the
18 Petition, and payments for those services, are disclosed on the attached Rule 2014 Verified
19 Statement for Proposed Professional.

20 18. Debtor agrees and understands that Tonkon Torp has reserved the right
21 to withdraw as counsel to Debtor, and Debtor hereby consents to such a withdrawal, in the
22 event it becomes apparent Tonkon Torp will not be paid for its services. Debtor also
23 recognizes that professional fees and costs incurred by Tonkon Torp are subject to approval
24 by the Court after review of fee applications filed by Tonkon Torp.

25 19. To the best of Debtor's knowledge, the partners and associates of
26 Tonkon Torp do not have any connection with Debtor, its creditors, any other party-in-

1 interest, or their respective attorneys or accountants, except as stated in the Rule 2014
2 Verified Statement of Proposed Professional.

3 20. A proposed Order Authorizing Employment of Tonkon Torp LLP as
4 Attorneys for Debtor is attached as **Exhibit 1**.

5 For the reasons stated in this Application, Debtor requests that the Court enter
6 an order authorizing it to employ Tonkon Torp to represent Debtor as its general counsel in
7 this Chapter 11 case as of the Petition Date, with compensation and reimbursement of
8 expenses to be paid as an administrative expense in such amounts as may be allowed by this
9 Court after notice and hearing pursuant to Section 330 of the Bankruptcy Code or as
10 otherwise provided by Court order.

11 DATED this 16th day of January, 2019.

12 B. & J. PROPERTY INVESTMENTS, INC.

13
14 By /s/ William Berman
15 William Berman, President

16 Presented by:

17 TONKON TORP LLP

18
19 By /s/ Ava L. Schoen
20 Timothy J. Conway, OSB No. 851752
21 Ava L. Schoen, OSB No. 044072
22 Attorneys for Debtor
23
24
25
26

EXHIBIT 1

PROPOSED FORM OF ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

B. & J. Property Investments, Inc.,
Debtor.

Case No. 19-60138-pcm11

ORDER GRANTING DEBTOR'S
APPLICATION FOR ORDER TO EMPLOY
TONKON TORP LLP AS ATTORNEYS
FOR DEBTOR

THIS MATTER having come before the Court upon Debtor's Application for Order to Employ Tonkon Torp LLP as Attorneys for Debtor [ECF No. ____], a hearing having been held before the Court, and the Court being duly advised in the premises and finding good cause; now, therefore;

IT IS HEREBY ORDERED that:

1. The Application is granted.
2. In accordance with Bankruptcy Code Section 327(a), Debtor is authorized to retain and employ Tonkon Torp as its general counsel in all matters in the above Chapter 11 case as of the Petition Date to perform all of the services set forth in the Application, on the terms set forth in the Application.

3. Tonkon Torp's compensation shall be subject to Court approval in accordance with Sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court, including any procedures that may be established under Local Rule 2016-1.

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I certify that I have complied with the requirements of LBR 9021-1(a)..

Presented by:

TONKON TORP LLP

By _____
Timothy J. Conway, OSB No. 851752
Ava L. Schoen, OSB No. 044072
888 S.W. Fifth Avenue, Suite 1600
Portland, OR 97204-2099
Telephone: 503-221-1440
Facsimile: 503-274-8779
E-mail: tim.conway@tonkon.com
ava.schoen@tonkon.com
Attorneys for Debtor

cc: List of Interested Parties

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEBTOR'S APPLICATION FOR ORDER TO EMPLOY TONKON TORP LLP AS ATTORNEYS FOR DEBTOR** was served on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, the parties indicated as "Non-ECF" on the attached List of Interested Parties were served by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 17th day of January, 2019.

TONKON TORP LLP

By /s/ Ava L. Schoen

Timothy J. Conway, OSB No. 851752

Ava L. Schoen, OSB No. 044072

Attorneys for Debtor

038533/00001/8569285v1

LIST OF INTERESTED PARTIES

***In re B. & J. Property Investments, Inc.* U.S. Bankruptcy Court Case No. 19-60138-pcm11**

ECF PARTICIPANTS

- TIMOTHY J CONWAY tim.conway@tonkon.com, candace.duncan@tonkon.com; spencer.fisher@tonkon.com
- US TRUSTEE, EUGENE USTPRegion18.EG.ECF@usdoj.gov

NON-ECF PARTICIPANTS

COLUMBIA CREDIT UNION

Teresa H. Pearson
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204

WILLIAM J. BERMAN

Nicholas J. Henderson
Motschenbacher & Blattner LLP
117 SW Taylor Street, Suite 300
Portland, OR 97204-3029

BETTER BUSINESS MANAGEMENT

Toby Tingleaf
Sherman Sherman Johnnie & Hoyt, LLP
693 Chemeketa St. NE
Salem, OR 97301

TOP 20 UNSECURED CREDITORS

Class Action Plaintiffs
c/o Brady Mertz
Brady Mertz PC
345 Lincoln St.
Salem, OR 97302

Saalfeld Griggs PC
Attn: Hunter Emerick
POB 470
Salem, OR 97308

Portland General Electric
POB 4438
Portland, OR 97208

Judson's Plumbing
POB12669
Salem, OR 97330

City of Salem
555 Liberty St. SE, Room 230
Salem, OR 97301

Comcast Business
POB 34744
Seattle, WA 98124-1744

Pacific Source
POB 7068
Springfield, OR 97475-0068

Pacific Sanitation
POB 17669
Salem, OR 97305

US Bank
POB 6352
Fargo, ND 58125-6352

Miller Paint
390 Lancaster Dr. NE
Salem, OR 97301

HotSuff Spas & Pool
1840 Lancaster Dr. NE
Salem, OR 97305

NW Natural Gas
POB 6017
Portland, OR 97228-6017

Chateau Locks
1820 47th Terrace East
Bradenton, FL 34203-3773

American Funds
POB 6007
Indianapolis, IN 46206-6007

Century Link
POB 21155
Seattle, WA 98111-9255

Walter Nelson Company
1270 Commercial St. NE
Salem, OR 97301

Statesman Journal
280 Church St.
Salem, OR 97301

Pacific Screening
POB 25582
Portland, OR 97298

DEX Media
Dex Media Attn: Client Care
1615 Bluff City Highway
Bristol, TN 37620

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re)
) Case No. _____
)
)
Debtor(s)) RULE 2014 VERIFIED STATEMENT
) FOR PROPOSED PROFESSIONAL

Note: To file an amended version of this statement per ¶19, file a fully completed amended Rule 2014 statement on LBF #1114 and clearly identify any changes from the previous filed version.

1. The applicant is not a creditor of the debtor except:
2. The applicant is not an equity security holder of the debtor.
3. The applicant is not a relative of the individual debtor.
4. The applicant is not a relative of a general partner of the debtor (whether the debtor is an individual, corporation, or partnership).
5. The applicant is not a partnership in which the debtor (as an individual, corporation, or partnership) is a general partner.
6. The applicant is not a general partner of the debtor (whether debtor is an individual, corporation, or partnership).
7. The applicant is not a corporation of which the debtor is a director, officer, or person in control.
8. The applicant is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor.
9. The applicant is not a person in control of the debtor.
10. The applicant is not a relative of a director, officer or person in control of the debtor.
11. The applicant is not the managing agent of the debtor.
12. The applicant is not and was not an investment banker for any outstanding security of the debtor; has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor; and is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of such an investment banker.
13. The applicant has read 11 U.S.C. §101(14) and §327, and FRBP 2014(a); and the applicant's firm has no connections with the debtor(s), creditors, any party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, or any District of Oregon Bankruptcy Judge, except as follows:

14. The applicant has no interest materially adverse to the interest of the estate or of any class of creditors or equity security holders.
15. Describe details of all payments made to you by either the debtor or a third party for any services rendered on the debtor's behalf within a year prior to filing of this case:
16. The debtor has the following affiliates (as defined by 11 U.S.C. §101(2)). Please list and explain the relationship between the debtor and the affiliate:
17. The applicant is not an affiliate of the debtor.
18. Assuming any affiliate of the debtor is the debtor for purposes of statements 4-13, the statements continue to be true except (list all circumstances under which proposed counsel or counsel's law firm has represented any affiliate during the past 18 months; any position other than legal counsel which proposed counsel holds in either the affiliate, including corporate officer, director, or employee; and any amount owed by the affiliate to proposed counsel or its law firm at the time of filing, and amounts paid within 18 months before filing):
19. The applicant hereby acknowledges that he/she has a duty during the progress of the case to keep the court informed of any change in the statement of facts which appear in this verified statement. In the event that any such changes occur, the applicant immediately shall file with the court an amended verified statement on LBF #1114, with the caption reflecting that it is an amended Rule 2014 statement and any changes clearly identified.

THE FOLLOWING QUESTIONS NEED BE ANSWERED ONLY IF AFFILIATES HAVE BEEN LISTED IN STATEMENT 16.

20. List the name of any affiliate which has ever filed bankruptcy, the filing date, and court where filed:

21. List the names of any affiliates which have guaranteed debt of the debtor or whose debt the debtor has guaranteed. Also include the amount of the guarantee, the date of the guarantee, and whether any security interest was given to secure the guarantee. Only name those guarantees now outstanding or outstanding within the last 18 months:
22. List the names of any affiliates which have a debtor-creditor relationship with the debtor. Also include the amount and date of the loan, the amount of any repayments on the loan and the security, if any. Only name those loans now outstanding or paid off within the last 18 months:
23. List any security interest in any property granted by the debtor to secure any debts of any affiliate not covered in statements 20 and 21. List any security interest in any property granted by the affiliate to secure any debts of the debtor not covered in statements 21 and 22. Also include the collateral, the date and nature of the security interest, the name of the creditor to whom it was granted, and the current balance of the underlying debt:
24. List the name of any affiliate who is potentially a "responsible party" for unpaid taxes of the debtor under 26 U.S.C. §6672:

I verify that the above statements are true to the extent of my present knowledge and belief.

Applicant

In re

Case No. xx-xxxxx-xxxxx

ATTACHMENT #1

In re

Case No. xx-xxxxx-xxxxx